

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6**

FILED

2012 APR 20 PM 2:32

**REGIONAL HEARING CLERK
EPA REGION VI**

**IN THE MATTER OF:
Eagle Picher Carefree Battery Superfund
Site
Socorro County, Socorro, New Mexico**

**U.S. EPA Region 6
CERCLA Docket No. 06-08-11
Proceeding Under Section 122(h)(1) of the
Comprehensive Environmental Response,
Compensation, and Liability Act, as
amended, 42 U.S.C. § 9622(h) (1)**

**SETTLEMENT AGREEMENT FOR
RECOVERY OF RESPONSE COSTS**



659223

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I. JURISDICTION

1. This Settlement Agreement for Recovery of Response Costs ("Settlement Agreement") is entered into pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622 (h)(1), which authority has been delegated to the Regional Administrators of EPA by EPA Delegation No. 14-14-D and redelegated by the Regional Administrator to the Director, Superfund Division, by EPA Delegation Nos. R6-14-14-A, 14-14-C and 14-14-D (June 8, 2001).

2. This Settlement Agreement is made and entered into by EPA and the City of Socorro, New Mexico identified hereinafter as the "Settling Party." The Settling Party consents to and will not contest EPA's authority to enter into this Settlement Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Settlement Agreement concerns the Eagle Picher Carefree Battery Superfund Site ("Site") located approximately two miles north of the City of Socorro in Socorro County, New Mexico. The company, EaglePicher, manufactured printed circuit boards and produced non-automotive lead-acid batteries on the Site. The documented releases on the Site include the onsite disposal of the hazardous substances trichloroethylene (TCE) and related compounds in groundwater, which were detected in the City of Socorro municipal drinking water well located on the former Eagle Picher property, in a second City municipal drinking water well (Olsen Well) located downgradient approximately two miles south of the former Eagle Picher property, and in residential wells also located downgradient from the former Eagle Picher property. The TCE-contaminated groundwater plume is two miles long and a ¼ mile wide and extends from the former EaglePicher property downgradient to the City of Socorro. Documented releases also include lead (Pb), chromium (Cr) and cadmium (Cd) in surface and shallow soils on the Site. EPA alleges that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. §9601(9).

4. In 1962, ownership of the 173-acre Site was transferred from the State of New Mexico to the City of Socorro, New Mexico (Settling Party). The Settling Party leased the property to EaglePicher for industrial operations beginning in 1963. In 1964, the Settling Party sold the property to EaglePicher. From 1963 until 1976, EaglePicher operated a printed circuit board manufacturing plant on the Site. In 1976, EaglePicher conveyed the Site back to the Settling Party in a quitclaim deed transfer. In 1979, the Settling Party leased the Site to EaglePicher for light manufacturing, which included the production of non-automotive lead-acid batteries. In

2000, EaglePicher ceased operations at the Site when its lease with the Settling Party expired. The Settling Party remains the owner of the Site.

5. As the manufacturer of the printed circuit boards and the lead batteries, and the owner of the Site during the disposal of hazardous substances at the Site, EaglePicher is a past owner and operator at the Site and, therefore, a responsible party under CERCLA § 9607 (a) (2).

6. The Settling Party is a responsible party under CERCLA § 9607 (a)(1) and (2) as the owner of the Site during the disposal of hazardous substances and the current owner of the Site.

7. In 2005, EaglePicher filed for bankruptcy under Chapter 11. The EPA filed a proof of claim in September 2005. In a February 5, 2007 order granting the summary judgment motion of the United States, United States Bankruptcy Judge J. Vincent Aug, Jr., United States Bankruptcy Court, Southern District of Ohio, concluded as a matter of law that EaglePicher Technologies is liable under CERCLA.

8. U.S. Bankruptcy Judge Aug also decided in the February 5, 2007 order that the EPA had established its past costs in the amount of \$965,530.54, and that the allowed past-cost amount of the claim in the bankruptcy case is \$357,246.00, a reduction to 37% based on a settlement agreement in EaglePicher's prior bankruptcy. (In re EaglePicher Holdings, Inc. et al., Case Nos. 05-12601, 05-12604 [Jointly Administered] Chapter 11). This past-cost amount was reduced further to 45.7 % or \$163,261.42, plus interest, in accordance with the distribution payout schedule reported by the trustee of EaglePicher Technologies in the current bankruptcy.

9. In a July 17, 2007 order, Judge Aug held that the EPA had established the claim for future estimated response costs in the amount of approximately \$23.6 million, reduced to 37% or \$8,735,434, based on a settlement agreement in EaglePicher's prior bankruptcy. This allowed amount of future estimated costs was reduced further to 45.7 % or \$4,155,354.76, plus interest, in accordance with the distribution payout schedule reported by the trustee of EaglePicher Technologies in the current bankruptcy.

10. The Site was listed on the final National Priorities List (NPL) on September 19, 2007.

11. The EPA and the New Mexico Environment Department (NMED) are currently drafting the plans for a Remedial Investigation and Feasibility Study (RI/FS) at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604. The remedial investigation will determine the full nature and extent of contamination at the Site. The feasibility study will describe the alternative technologies that may be used to address the contamination at the Site.

12. In response to the EPA's demand to pay for a part of, or conduct the RI/FS at the Site, the Settling Party claimed an inability to contribute to the cleanup costs at the Site.

13. The EPA evaluated the inability to pay claim of the Settling Party in a coordinated effort with the Agency's financial contractor, and determined that \$200,000 was a reasonable amount that the Settling Party could contribute toward the payment of response costs.

14. EPA and the Settling Party recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law.

III. PARTIES BOUND

15. This Settlement Agreement shall be binding upon EPA and upon the Settling Party, its municipal officials, employees, agents and representatives, and their successors and assigns. Any change in the legal status of the Settling Party, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the Settling Party's responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her.

IV. DEFINITIONS

16. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement, the following definitions shall apply:

a. "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 to 9675.

b. "Day" means a calendar day unless expressly stated to be a business or working day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period runs until the end of the next day not a Saturday, Sunday, or Federal holiday.

c. "Effective Date" shall mean the effective date of this Settlement Agreement as provided in Section XVI.

d. "EPA" means the United States Environmental Protection Agency and any successor department or agency of the United States.

e. "Hazardous Substance" shall have the meaning prescribed in CERCLA, 42 U.S.C. §9601(14).

f. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues.

g. "National Contingency Plan" or "NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan promulgated under Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including any amendments thereto.

h. "Paragraph" means a portion of this Settlement Agreement identified by an Arabic numeral followed by a period.

i. "Parties" shall mean EPA and the Settling Party.

j. "Requirements of this Settlement Agreement" mean: payments that the Settling Party is to make under this Settlement Agreement; scheduled deadlines that the Settling Party is to meet under this Settlement Agreement; and any other obligation of the Settling Party under this Settlement Agreement. It is a violation of this Settlement Agreement for the Settling Party to fail to perform a requirement of this Settlement Agreement

k. "Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States has incurred or will incur at or in connection with the Site.

l. "Section" means a portion of this Settlement Agreement identified by a Roman numeral and includes one or more Paragraphs.

m. "Settlement Agreement" means this Settlement Agreement for Recovery of Response Costs.

n. "Settling Party" shall mean the responsible party identified as the City of Socorro, Socorro County, New Mexico.

o. "Site" shall mean the Eagle Picher Carefree Battery Superfund Site, located approximately two miles north of the City of Socorro in Socorro County, New Mexico.

p. "State" means the State of New Mexico, any successor departments or agencies of New Mexico.

q. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. PAYMENT OF RESPONSE COSTS

17. Within thirty (30) days of the Effective Date, the Settling Party shall pay \$200,000.00 (two hundred thousand dollars) in Response Costs.

18. Payment by the Settling Party shall be made to EPA by Electronic Funds Transfer ("EFT") or by submitting a certified or cashier's check.

a. EFT or wire transfers must be accompanied by a statement identifying the specific name and address of the party making payment, the Site name "Eagle Picher Carefree Battery Superfund Site, Socorro, New Mexico – Special Account," EPA Region 6, Site/Spill ID Number 06TD and EPA Docket Number 06-08-11. Wire transfers must be directed to the:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
Swift address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read: "D 68010727
Environmental Protection Agency"

b. Certified or cashier's checks should be made payable to "EPA Hazardous Substance Superfund" and should reference "Special Account - Eagle Picher Carefree Battery Superfund Site, Socorro, New Mexico," EPA Region 6, Site/Spill ID Number 06TD and EPA Docket Number 06-08-11. Checks should be forwarded to:

US Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

19. At the time of payment, the Settling Party shall also send notice of payment including a copy of the EFT transmittal documentation or check to:

Team Leader
Superfund Enforcement Assessment Section (6SF-TE)
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

20. In the event that the payment from the Settling Party is not made in accordance with the schedule, that Settling Party shall pay Interest on the unpaid balance, which shall begin to accrue on the first day after the payment is due and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of the Settling Party's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section VI.

21. The total amount to be paid pursuant to Paragraph 17 by the Settling Party shall be deposited in the Special Account for the Eagle Picher Carefree Battery Superfund Site.

VI. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

22. **Stipulated Penalty.**

a. If any amount due to EPA under Paragraph 17 is not paid by the required date, the Settling Party shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 20, \$1000 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "Stipulated Penalties" and shall be made payable to EPA Hazardous Substance Superfund. The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site name, the EPA Region and Site Spill ID Number, and the EPA Docket Number for this action. The Settling Party shall send the check (and any accompanying letter) to:

US Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

c. At the time of each payment, the Settling Party shall also send notice that payment has been made to EPA in accordance with Section V (Payment of Response Costs).

Such notice shall identify the EPA Region and Site Spill ID Number (06TD) and the EPA Docket Number (6-08-11) for this action.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified the Settling Party of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

e. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of the Settling Party's failure to comply with the requirements of this Settlement Agreement, the Settling Party shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, if a Settling Party fails or refuses to comply with a requirement of this Settlement Agreement. If the United States, on behalf of EPA, brings an action to enforce this Settlement Agreement, the Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

f. Notwithstanding any other provision of this Section, EPA may, in its nonreviewable discretion, waive payment, in an appropriate writing, of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. Payment of Stipulated Penalties shall not excuse the Settling Party from payment as required by Section V or from performance of any other requirements of this Settlement Agreement.

VII. COVENANT NOT TO SUE BY EPA

23. Except as specifically provided in Section VIII (Reservations of Rights by EPA), EPA covenants not to sue or take administrative action against Settling Party pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§9606 and 9607(a), with regard to the Site. With respect to present and future liability, this covenant shall take effect upon receipt by EPA of all amounts required by Section V (Payment of Response Costs) and any amount due under Section VI (Failure to Comply with Settlement Agreement). This covenant not to sue is conditioned upon the satisfactory performance by the Settling Party of its requirements under this Settlement Agreement. This covenant not to sue is conditioned upon the veracity and completeness of the Financial Information provided to EPA by the Settling Party. If the Financial Information is subsequently determined by EPA to be false or, in any material aspect, inaccurate, the covenant not to sue shall be null and void. EPA shall retain its right to pursue any other causes of action arising from the Settling Party's false or materially inaccurate information. This covenant not to sue extends only to the Settling Party and does not extend to any other person.

VIII. RESERVATIONS OF RIGHTS BY EPA

24. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against the Settling party with respect to all matters not expressly included within the Covenant Not to Sue by EPA in Paragraph 23. Notwithstanding any other provision of this Settlement Agreement, EPA reserves all rights against Settling Party with respect to:

- a. liability for failure of Settling Party to meet a requirement of this Settlement Agreement;
- b. criminal liability; and
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability based on the ownership or operation of the Site by Settling Party when such ownership or operation commences after signature of this Settlement Agreement;
- e. liability based on Settling Party's or lessee's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of a hazardous substance or a solid waste at or in connection with the Site after signature of this Settlement Agreement; and
- f. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

25. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the EPA may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

IX. COVENANT NOT TO SUE BY SETTLING PARTY

26. The Settling Party covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Settlement Agreement, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

27. The covenant not to sue set forth in this Section does not pertain to any other matters other than those expressly identified herein.

Except as provided in Paragraph 29, (Waiver of Claims) and Paragraph 33 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 24 (c) – (f), but only to the extent that Settling Party's claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

28. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. §9611, or 40 C.F.R. § 300.700(d).

29. The Settling Party agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that it may have for all matters relating to the Site against any person that has entered or in the future enters into a final settlement based on limited ability to pay with EPA with respect to the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling party may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Party.

X. EFFECT OF SETTLEMENT/CONTRIBUTION

30. Except as provided in Paragraph 29, nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Each of the Parties expressly reserve any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. §9613(f) (2) and (3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

31. EPA and the Settling Party agree that this settlement constitutes an administrative settlement for purposes of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and that Settling Party is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§9613(f)(2) and 9622(h)(4), or as may be otherwise provided by law, for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person, provided, however, that if the United States exercises rights under the reservations in Paragraph 24 (Reservation of Rights by EPA), other than in Paragraphs 24a (claims for failure to meet a requirement of the settlement) or 24b (criminal liability), the "matters addressed" in this Settlement Agreement will no longer include those response costs or response actions.

32. The Settling Party shall, with respect to any suit or claim brought by it for matters related to this Settlement Agreement, notify EPA in writing within ten days of service of the complaint or claim upon it. In addition, the Settling Party shall notify EPA within ten days of service or receipt of any Motion for Summary Judgment and within ten days of receipt of any order from a court setting a case for trial, for matters related to this Agreement.

33. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, the Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue set forth in Section VII.

XI. SITE ACCESS

34. Commencing upon the Effective Date of this Settlement Agreement, or upon the request by EPA, the Settling Party agrees to provide EPA, and its representatives and contractors, and NMED access at all reasonable times to the Site and to any other property owned or controlled by the Settling Party to which access is determined by EPA to be required for the implementation of this Settlement Agreement, or for the purpose of conducting any response activity related to the Site, including but not limited to:

- a. Monitoring of investigation, removal, remedial or other activities at the Site;
- b. Verifying any data or information submitted to EPA;
- c. Conducting investigations relating to contamination at or near the Site;

- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing remedial activities or any response actions at or near the Site;
- f. Determining whether the Site or other real property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the remedial action; and
- g. Implementing, monitoring, maintaining, reporting on, and enforcing any Institutional Controls.

35. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XII. RETENTION OF RECORDS

36. Until 5 years after the Effective Date of this Settlement Agreement, the Settling Party shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to response actions taken at the Site or to the liability of any person under CERCLA with respect to the Site, regardless of any municipal or other retention policy to the contrary.

37. At the conclusion of the 5-year document retention period in the preceding paragraph, the Settling Party shall notify EPA at least 90 days prior to the destruction of any such records and, upon request by EPA, the Settling Party shall deliver any such records to EPA.

38. In connection with delivery of any documents to EPA pursuant to this Section, the Settling Party may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Party asserts such a privilege, it shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by the Settling Party. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

39. Each Settling Party hereby certifies that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the State or the filing

of suit against it regarding the Site and that such Settling Party has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XIII. NOTICES AND SUBMISSIONS

40. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Settlement Agreement with respect to EPA and the Settling Party.

As to EPA:

Mr. Robert Werner
Superfund Division
Enforcement Assessment Section (6SF-TE)
United States Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733
(214) 665-6724 (phone)
(214) 665-6660 (fax)
Werner.Robert@epa.gov

As to the Settling Party:

Pete V. Domenici, Jr. Esq.
Domenici Law Firm
320 Gold Avenue SW, Suite 1000
Albuquerque, New Mexico 87102
505-883-6250 (Phone)

XIV. SEVERABILITY INTEGRATION/APPENDICES

41. If a court issues an order that invalidates any provision of this Settlement Agreement or finds that the Settling Party has sufficient cause not to comply with one or more provisions of this Settlement Agreement, the Settling Party shall remain bound to comply with all provisions

of this Settlement Agreement not invalidated or determined to be subject to a sufficient cause defense by the court's order.

42. This Settlement Agreement constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement.

XV. PUBLIC COMMENT

43. This Settlement Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122 (i) (3) of CERCLA, EPA may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper or inadequate.

XVI. ATTORNEY GENERAL APPROVAL

44. The Attorney General of the United States or his designee has approved the settlement embodied in this Settlement Agreement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

XVII. EFFECTIVE DATE

45. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 43 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Settlement Agreement.

The undersigned representative of the Settling Party certifies that he/she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party whom they represent.

It is so Agreed this 18th day of April, 2011.

BY: Samuel Coleman, P.E., Director DATE: 4/18/12
Superfund Division
U.S. Environmental Protection Agency
Region 6

BY: SETTLING PARTY City of Socorro
(Name of Settling Party)

[Signature] DATE: 9-21-11
Signatory of Authorized Representative

Ravi Bhasker, Mayor
Print Name of Signatory and Title